United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 19-0135**
	)	**Issued: April 25, 2019**
U.S. POSTAL SERVICE, POST OFFICE, East St. Louis, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 24, 2018 appellant, through counsel, filed a timely appeal from an August 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the August 13, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted June 8, 2017 employment incident.

FACTUAL HISTORY

On June 12, 2017 appellant, then a 50-year-old carrier technician, filed a traumatic injury claim (Form CA-1) for a right shoulder injury that he attributed to a June 8, 2017 work-related motor vehicle accident (MVA). He indicated that a tractor-trailer backed into his work van while in the performance of duty. The employing establishment did not contest the June 8, 2017 incident or whether appellant was in the performance of duty at the time of the MVA. It also completed an authorization for examination and/or treatment (Form CA-16) following his reported June 8, 2017 MVA.

In a June 12, 2017 work activity status report, Dr. Christine E. Jones, whose specialty is unknown, diagnosed cervicalgia, right shoulder pain, and low back pain. She stated that appellant could return to work on June 12, 2017 with restrictions.

By development letter dated June 15, 2018, OWCP informed appellant that he had not submitted sufficient evidence to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded him 30 days to submit additional evidence and respond to its inquiries.

OWCP subsequently received June 8, 2017 emergency department discharge instructions for a diagnosis of lumbosacral strain. The instructions noted that appellant had been treated by Matthew R. Peterson, a physician assistant.

In a report dated June 12, 2017, Dr. Jones examined appellant for complaints of a back injury. She noted that he stated while his postal vehicle was still, an 18-wheeler truck backed into his vehicle. Although he felt a little sore at the time, he was able to complete his regular route driving and delivering mail. However, the next morning appellant experienced discomfort in his lower back, right shoulder, and neck. He then went to the emergency department, where he was evaluated and given medication. Appellant was off work for three days. On examination of appellant's lumbar spine, Dr. Jones noted tenderness to palpation. She assessed acute bilateral low back pain without sciatica, right shoulder pain, and neck pain. Dr. Jones recommended physical therapy and provided work restrictions of lifting up to 20 pounds frequently, bending occasionally, changing positions periodically to relieve discomfort, and no reaching above the head with his affected extremities.

On June 15, 2017 Denise Jordan, a family nurse practitioner, referred appellant for physical therapy. In a June 29, 2017 work excuse note, she opined that he should remain off work until reevaluated on July 28, 2017. OWCP also received a July 10, 2017 initial physical therapy evaluation report from Jenna Mueth, a physical therapist.

By decision dated July 26, 2017, OWCP denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment incident of June 8, 2017.

In a prescription dated July 27, 2017, Dr. Bassam Albarcha, a Board-certified internist, noted that appellant had been injured in a motor vehicle incident, providing an ICD-10 diagnosis code corresponding to an assessment of a person injured in an unspecified motor vehicle incident, subsequent encounter. He prescribed appellant physical therapy two to three times per week for six weeks.

Appellant resubmitted the physical therapy evaluation report dated July 10, 2017, countersigned by Dr. Albarcha on July 31, 2017. The report noted that he had been diagnosed with lumbar sprain at the emergency department and that he was in constant pain, which was only relieved by pain medication. On examination, appellant was noted to have discomfort to the paraspinal lumbar area, mild tightness bilaterally, and reduced range of motion. His plan of care was a home exercise program of core and hip strengthening and stretching as tolerated to assist with activities of daily living, and techniques that the physical therapy saw fit for pain relief.

By letter dated August 1, 2017 from a nurse practitioner, countersigned by Dr. Albarcha, it was noted that appellant was involved in a motor vehicle incident in June 2017 and as a result, suffered a back injury, back pain, neck injury, neck pain, muscle and shoulder pain, and a pins-and-needles sensation in the arms and hands. The letter stated that a reduced work duty was required due to these assessments and that he would return to duty with limitations.

On August 7, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

Appellant submitted records of physical therapy from July 10 through August 1, 2017, which were unsigned. He also submitted reports signed by a nurse practitioner dated from June 15 through August 29, 2017.

The hearing was held on January 16, 2018. During the hearing, appellant described the circumstances of a motor vehicle incident on June 8, 2017, and noted that he went to the emergency room on the date of the incident. The hearing representative noted that the record did not contain reports from individuals that could be accepted as physicians rendering concrete diagnoses. He kept the record open for 30 days for the submission of additional evidence.

By decision dated March 7, 2018, OWCP's hearing representative affirmed the July 26, 2017 decision, finding that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted June 8, 2017 employment incident.

On April 5, 2018 appellant, through counsel, requested reconsideration of the decision of March 7, 2018 and submitted a March 2, 2018 letter from a nurse practitioner, which had been countersigned by Dr. Albarcha. The letter stated that appellant was involved in a motor vehicle incident in June 2017 while delivering mail in a postal truck. Appellant was treated in the emergency room on the date of the incident. The letter noted that he sustained a neck injury, shoulder injury, upper back injury, lower back injury, and a pins-and-needles sensation in the arms and hands. Over the months following the incident, appellant experienced numerous episodes of pain with activity, and he was later diagnosed with cervical spondylosis and cervical spondylolisthesis. He received physical therapy and remained on reduced work duty.

By decision dated August 13, 2018, OWCP denied modification of its March 7, 2018 decision. It found that the March 2, 2018 note failed to provide a rationalized explanation of how

the cervical spondylosis and cervical spondylolisthesis resulted from the accepted June 8, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[8] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[9] The second component is whether the employment incident caused a personal injury.[10] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[11]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[12] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[13] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by

[4] *Supra* note 2.

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[9] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[12] *T.H.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

[13] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted June 8, 2017 employment incident.

In support of his claim, appellant submitted numerous notes and reports that were authored by a nurse practitioner and/or a physician assistant. Because these reports were not prepared by or countersigned by a qualified physician as defined under FECA, the evidence will not suffice for purposes of establishing entitlement to FECA benefits.[15]

Appellant submitted a physical therapy evaluation report dated July 10, 2017, countersigned by Dr. Albarcha on July 31, 2017. The Board finds that, as Dr. Albarcha has countersigned this report, it constitutes medical evidence.[16] The report noted that appellant had been diagnosed with lumbar sprain at the emergency department and that he was in constant pain.[17] The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value.[18] As such, this report, which did not contain any opinion on the cause of appellant's condition, is of no probative value on the issue of causal relationship.[19]

On June 12, 2017 Dr. Jones assessed appellant with acute bilateral low back pain without sciatica, right shoulder pain, and neck pain. In a prescription dated July 27, 2017, Dr. Albarcha noted that appellant had been injured in a motor vehicle incident. By letter dated August 1, 2017 from a nurse practitioner, countersigned by Dr. Albarcha, it was noted that appellant had been involved in a motor vehicle incident and suffered a back injury, back pain, neck injury, neck pain, muscle and shoulder pain, and a pins-and-needles sensation in the arms and hands. The Board has held that a medical report is of no probative value if it does not provide an opinion on causal relationship.[20] As such, these notes, letters, and reports are insufficient to establish the claim.

In a letter dated March 2, 2018 from a nurse practitioner, which was countersigned by Dr. Albarcha, it was noted that appellant was involved in a motor vehicle incident in June 2017 while delivering mail in a postal truck. Appellant was treated in the emergency room on the date of the incident. The letter noted that he sustained a neck injury, shoulder injury, upper back injury,

[14] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[15] *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1).

[16] *K.W., id.*; *David P. Sawchuk, id.* Federal (FECA) Procedure Manual, *id.*

[17] *See T.G.*, Docket No. 13-0076 (issued March 22, 2013).

[18] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[19] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] *Id.*

lower back injury, and a pins-and-needles sensation in the arms and hands. Over the months following the incident, appellant experienced numerous episodes of pain with activity, and he was later diagnosed with cervical spondylosis and cervical spondylolisthesis. The letter of March 2, 2018 did not contain a clear rationale as to how his cervical conditions were related to the incident of June 8, 2017; rather, the opinion was conclusory in nature.[21] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident was sufficient to result in the diagnosed medical condition is not sufficient to meet a claimant's burden of proof to establish a claim.[22] As such, the letter dated March 2, 2018 is insufficient to establish causal relationship between the incident of June 8, 2017 and appellant's diagnosed cervical conditions.

As the medical evidence of record does not contain a rationalized explanation sufficient to establish causal relationship, the Board finds that appellant has not met his burden of proof.[23]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to the accepted June 8, 2017 employment incident.

[21] *See D.O.*, Docket No. 18-0086 (issued March 28, 2018).

[22] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[23] The Board notes that the employing establishment issued appellant a signed Form CA-16 authorizing treatment for her June 12, 2016 right shoulder injury. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee s claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board